

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Unbundling of Local Exchange Carrier )  
Common Line Facilities )  
 )

RM-8614

**REPLY COMMENTS ON**  
**PETITION FOR RULEMAKING**

Southwestern Bell Telephone Company (SWBT) hereby files its Reply Comments in response to the numerous Comments recently filed in the above-captioned proceeding. SWBT believes that based on the record in this proceeding, the Commission should deny the Petition for Rulemaking filed by MFS Communications Company, Inc. (MFS).

In its Petition for Rulemaking, MFS asked the Commission to initiate a rulemaking proceeding to adopt rules to "unbundle" the "local loop." In reality, MFS seeks to in effect have the Commission assume jurisdiction over a portion of local exchange telephone service. Numerous commenting parties questioned the Commission's jurisdiction under the Communications Act to take the drastic preemptive action suggested by MFS. Furthermore, assuming arguendo the Commission had jurisdiction to act as requested by MFS, it would unquestionably be unwise to do so now, particularly as Congress, the Commission and state regulators are considering comprehensive changes to the existing telecommunications regulatory landscape. Finally, SWBT and other Local Exchange Carriers (LECs) already offer unbundled tariffed service components (Special Access Channel Terminations and Switched Access Entrance Facilities) which

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provide the functionalities that MFS is seeking to obtain via "unbundling of the local loop."<sup>1</sup> If the Commission were to do what MFS is suggesting, it would merely be duplicating already existing service components, which are available on an unbundled basis, at some preferential price level for MFS and others. Instead, the Commission should initiate a rulemaking proceeding to address the various access reform proposals that have already been filed with the Commission. These proposals encompass a myriad of significant issues which must be resolved in a comprehensive manner, not in a piecemeal manner as proposed by MFS.

SWBT supports full and fair competition in the telecommunications marketplace. The level playing field upon which full and fair competition must take place would simply not be furthered by MFS' proposal, however. The Commission should reject MFS' effort to deregulate local exchange service in a piecemeal manner and instead focus its efforts on matters over which it can and should exercise jurisdiction, such as comprehensive access reform.

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<sup>1</sup> See Comments of Ameritech at p. 9; Comments of BellSouth at pp. 9-15; Comments of GTE at pp. 23-29; Comments of SWBT at pp. 8-9 and 41-43.

I. THE RECORD SUPPORTS THE CONCLUSION THAT THE COMMISSION HAS NO JURISDICTION TO PREEMPT STATE REGULATION OF LOCAL EXCHANGE SERVICE.

In addition to SWBT,<sup>2</sup> numerous commenting parties<sup>3</sup> question the Commission's jurisdiction to take the drastic preemptive action requested by MFS in its Petition for Rulemaking. As these parties recognize and as SWBT stated in its Comments, the "local loop" which MFS seeks to unbundle is clearly an element of local exchange service which is placed within the exclusive jurisdiction of the states pursuant to Section 152(b) of the Communications Act. Even MCI admits that it is "concerned that certain aspects of MFS' proposal unnecessarily require preemption by the Commission of the states."<sup>4</sup>

If the Commission were to embark on the rulemaking proceeding proposed by MFS, the end result would likely be the asymmetric, de facto deregulation of local exchange service throughout the nation, without any state regulatory agency having had any say as to whether, or how, to carry out this purely intrastate action. As NARUC and every state regulatory agency filing comments in this proceeding recognized,<sup>5</sup> the Commission

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<sup>2</sup> Comments of SWBT at pp. 2-5.

<sup>3</sup> See Comments filed by the following parties: National Association of Regulatory Utility Commissioners (NARUC) at pp. 6-10; Maryland Public Service Commission at p. 5; Pennsylvania Public Utility Commission at pp. 3-6; State of New York Department of Public Service at pp. 3-6; Ameritech at pp. 4-5; Bell Atlantic at pp. 2-6; and BellSouth at pp. 15-18.

<sup>4</sup> Comments of MCI at p. 2, fn. 1. MCI also contends that certain aspects of MFS' proposal unnecessarily delegate to the states decision-making authority that is properly left to the Commission (i.e., access reform).

<sup>5</sup> See e.g., Comments of NARUC at pp. 6-7.

would be seriously overstepping its jurisdictional bounds and unlawfully interfering with matters exclusively reserved to the states by the Communications Act. As NARUC stated in its Comments, "[E]ven the artfully crafted language of the MFS Petition cannot obscure the intrastate focus of the MFS Petition."<sup>6</sup>

The record in this proceeding raises very serious doubts as to whether the Commission has jurisdiction to adopt the Rules proposed by MFS in its Petition for Rulemaking, and this Commission should therefore decline to initiate a rulemaking proceeding to do so.

**II. THE RECORD ALSO SUPPORTS THE CONCLUSION THAT MFS' UNBUNDLING PROPOSAL IS UNNECESSARY AND UNWISE.**

Assuming arguendo the Commission has jurisdiction to adopt Rules consistent with MFS' proposal, the persuasive record evidence submitted in this proceeding compels the conclusion that MFS' proposal to "unbundle" the "local loop" is unnecessary and unwise.

As numerous parties noted in their Comments,<sup>7</sup> there is simply no need for the Commission to open a federal rulemaking proceeding to address the unbundling of local loops. In its Petition, MFS asserts that antitrust principles compel the Commission to embark on this unlawful journey. As SWBT and other commenting parties extensively discussed, however, MFS' antitrust

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<sup>6</sup> Id. at p. 6.

<sup>7</sup> See, e.g., Comments of the Maryland Public Service Commission at pp. 9-11; Comments of Pacific Companies at p. 4; Comments of NARUC at pp. 8-9.

analysis is fundamentally flawed and clearly does not compel the Commission to initiate the rulemaking proceeding requested by MFS.

In addition to being unnecessary to initiate the rulemaking proceeding proposed by MFS, the record in this proceeding also confirms that it would be unwise for the Commission to do so. The issue of competition in the provision of local exchange service is already being addressed by state regulatory agencies across the nation. These agencies are clearly in the best position to fashion the architecture under which fair competition can flourish, taking into consideration the many unique local, not federal, conditions. The unbundling requested by MFS would have a major impact on local service rates and quality, as well as on the continued availability of states to sustain universal service. Federally mandated unbundling is simply not needed to foster competition, and MFS' local loop unbundling proposal would result in intolerable "piecemeal" regulation. Instead, the Commission should focus its efforts on a comprehensive examination of access reform, a matter which is presently before the Commission.<sup>8</sup>

### III. CONCLUSION

For the reasons discussed herein, and based on the persuasive record developed in this proceeding, the Commission should deny MFS' Petition for Rulemaking. To do otherwise would be unlawful, unnecessary and unwise.

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<sup>8</sup> See, Reform of the Interstate Access Charges Rules, United States Telephone Association Petition for Rulemaking, RM-8356, filed September 17, 1993.

Respectfully submitted,

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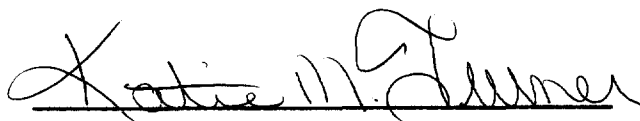
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April 25, 1995

**CERTIFICATE OF SERVICE**

I, Katie M. Turner, hereby certify that the foregoing, "Reply Comments on Petition for Rulemaking" in Docket No. RM-8614, has been filed this 25th day of April, 1995 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", is written over a solid horizontal line.

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